

## **Explanatory Memorandum to the Regulated Services (Service Providers and Responsible Individuals) (Wales) Amendment Regulations 2019**

This Explanatory Memorandum has been prepared by the Health and Social Services Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Minister/Deputy Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Amendment Regulations 2019.

Julie Morgan

**Deputy Minister for Health and Social Services**

5 March 2019

## **PART 1**

### **1. Description**

The Regulation and Inspection of Social Care (Wales) Act ('the 2016 Act') received Royal Assent on 18 January 2016. It provides the statutory framework for the regulation and inspection of social care services and the regulation of the social care workforce in Wales. To help achieve this it provides the Welsh Ministers with a range of regulation-making and other subordinate legislation powers.

This Explanatory Memorandum relates to *the Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) Regulations 2019* ("The 2019 amendment Regulations"). These regulations make changes to the substantive *Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017* ("the substantive Regulations").

### **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

No specific matters have been identified.

### **3. Legislative background**

The powers enabling these Regulations to be made are contained in section 2(3) and 27 of the 2016 Act.

These Regulations are being laid before the National Assembly under the affirmative procedure.

### **4. Purpose and intended effect of the legislation**

The purpose of the substantive Regulations is to ensure that providers of care home services, domiciliary support services, residential family centres and secure accommodation services achieve the required standards of care and support so that people's well-being and safety is maintained.

Requirements within the substantive Regulations span a number of aspects of care and support including the provision of information, staffing arrangements, premises and overall environmental standards, governance arrangements, safeguarding arrangements and ensuring the provision of person-centred care.

The 2019 amendment Regulations make a number of small changes to the substantive Regulations for additional clarity and to ensure consistency, where appropriate, with regulations made under phase 3 of implementation of the 2016 Act.

These amendments relate to a number of different areas, outlined below:

## **Exceptions**

Amendments have been made to the exceptions in the substantive Regulations to provide further clarity and certainty about the activity which should fall within the scope of regulation under the 2016 Act.

### Exception from the scope of a care home service

Changes have been made to the exceptions for care home services in relation to the provision of care and support to disabled children. These amendments ensure that only services which provide care and support “wholly or mainly” to disabled children, within the criteria set out in the regulations, are required to register as a care home, rather than any service which may have a disabled child participating. This replicates the position under the Care Standards Act 2000 and avoids the unintended consequence of bringing services into the scope of regulation that it would not be appropriate to regulate.

A further amendment has been made to the care home exceptions to exempt all holiday schemes of up to 28 days - regardless of whether the children are disabled or not - from having to register as a care home service. This amendment is part of the transitional arrangements for putting in place a suitable regulatory framework for residential holiday schemes for disabled children and ensures a more proportionate approach to the regulation of these schemes.

An amendment has also been made to provide an exception for small scale respite arrangements carried out in the carer’s own home for a child or sibling group. This will provide a degree of flexibility for short respite arrangements by parents of disabled children e.g. by those who use direct payments.

### Exception from scope of domiciliary support service

Amendments have been made to the exceptions for domiciliary support services to except services which only provide domiciliary support as ancillary to nursing care by a registered nurse from the scope of regulation as a domiciliary support service. It also excludes Local Health Board services providing care and support to meet needs which are related to the needs of individuals for nursing care. The intention is to exclude district and community nursing services from the scope of Care Inspectorate Wales regulation as they are already regulated under NHS legislation.

## **Extending Social Care Wales (SCW) registration date for managers of nurses agencies**

Managers of nurses agencies were not required to register with SCW under the Care Standards Act 2000. As indicated above however, some nurses agencies will be registering with Care Inspectorate Wales (CIW) as domiciliary support services under the 2016 Act. This amendment allows additional time for persons previously registered as managers of nurses agencies under the Care Standards Act, but who were not previously registered as managers of

domiciliary care agencies, to register with SCW. The purpose of this amendment is to provide a degree of flexibility and period of transition for these individuals.

### **Removing notification and record keeping requirements in respect of incidents of illness**

This amendment removes the requirement for regulated services to make notifications and keep records in respect of illness. The purpose of removing this requirement is to recognise that people will develop serious illnesses such as cancer or dementia but not as a consequence of the quality of care provided by the regulated service.

### **Amending wording in respect of pressure damage**

This amendment changes to wording in relation to record keeping and notification requirements in respect of incidents of pressure damage will ensure the Regulations are consistent with the revised wording in the All Wales Tissue Viability Nurse Guidance.

### **Category B**

Amending the wording of the definition of 'Category B' accommodation based services (which relate to a new extension to an existing building), will clarify how the additional requirements for new accommodation apply to providers who extend their premises.

## **5. Consultation**

A 12 week consultation ran from 28 September to 21 December 2019 on the draft regulations. Some changes were made to the regulations following the consultation. The consultation summary report and a list of respondents to the consultation will be published at <https://beta.gov.wales/regulated-services-service-providers-and-responsible-individuals-wales-amendment-regulations-2019>

## **6. Regulatory Impact Assessment (RIA)**

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these regulations.

A detailed regulatory impact assessment was completed for the substantive Regulations and is available at <http://www.assembly.wales/laid%20documents/sub-ld11277-em/sub-ld11277-em-e.pdf>